No. 73-1354

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In the Supreme Court of the United States

OCTOBER TERM, 1973

THE BUSINESS ROUNDTABLE, PETITIONER

v.

CONSUMERS UNION OF THE UNITED STATES, INC.

AND

COST OF LIVING COUNCIL

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS

MEMORANDUM FOR THE COST OF LIVING COUNCIL

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The decision of the Temporary Emergency Court of Appeals involves a question of construction of Section 205 of the Economic Stabilization Act of 1970, as amended, 87 Stat. 27, which governs public disclosure of information furnished by reporting firms to the Cost of Living Council.

Section 205 permits reporting firms to exclude proprietary information from public reports and the President or his delegate is authorized to promulgate regulations defining "what information or data are proprietary in nature * * *." In defining proprietary information, however, "* * * such regulations may not define as excludable any information or data which cannot currently be excluded from public annual reports

to the Securities and Exchange Commission * * * by a business enterprise exclusively engaged in the manufacture or sale of a substantial product * * *."

The plaintiffs, Consumers Union of the United States, Inc., *et al.*, instituted this suit seeking a declaratory judgment that certain of the public disclosure regulations promulgated by the Cost of Living Council pursuant to Section 205 were illegal and seeking an injunction rescinding those regulations and requiring the issuance of new regulations.

Plaintiffs' principal contention is that the regulations violate Section 205 because they include as non-disclosable information certain types of data which must be submitted to the Securities and Exchange Commission. Pet. App. G at 50a. The Cost of Living Council contends that the definitions of the data it requires are not the same as those used by the Securities and Exchange Commission, since the definitions used by the Cost of Living Council are more detailed than those utilized by the Securities and Exchange Commission. Pet. App. G at 51a.

The district court granted the defendants' motion for summary judgment. Pet. App. F. The Temporary Emergency Court of Appeals reversed, Pet. App. G, holding, *inter alia*, that consideration of the appeal was not precluded by the plaintiffs' failure to exhaust their administrative remedies; that the differences between the definitions utilized by the Cost of Living Council and the Securities and Exchange Commission were minor, Pet. App. G at 54a; and that, therefore, the regulations were invalid as in violation of the limitation contained in Section 205 to the effect that the regulations could not provide for the non-disclosure of data required to be submitted to the Securities and Exchange Commission. Petitioner, defendant-intervenor below, seeks review of this judgment of the Temporary Emergency Court of Appeals.

While the Cost of Living Council agrees with petitioner that the decision of the Temporary Emergency Court of Appeals is erroneous, the Solicitor General, on behalf of the Council, decided neither to file a petition for a writ of certiorari nor to join in the petition filed by petitioner because the Economic Stabilization Act of 1970 expires on April 30, 1974.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

APRIL 1974.

[931-1974-04]